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Phoenix, Arizona 85007

Robert R. Corbin

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ARIZONA ATTORNEY GENERAL

December 22, 1982

Mr. John Patrick Lyons
United Bank Plaza
120 West Broadway
Tucson, AZ 85701

Re: I82-139 (R82-106)

Dear Mr. Lyons:

We have reviewed your opinion dated July 8, 1982, to Mr. Fred Bull, Superintendent of the Sunnyside Unified School District No. 12 of Pima County. The following is a partial revision of your opinion which addressed the following questions:

1. Is truancy in and of itself a sufficient cause to suspend or expel a student in grades 1 through 8?
2. Is truancy a sufficient cause to suspend or expel a student in grades 9 through 12?
3. May the school district deny academic credit for any course in which the student has been truant or absent without cause for more than 10 percent of the actual class days?

We concur with your conclusion to the first question set forth above that, as in prior Ariz.Atty.Gen.Ops. 178-242, 179-023, and 179-179, truancy may not be justification for suspension or expulsion of a student in grades 1 through 8.

With regard to whether truancy is a sufficient cause to suspend or expel a student in grades 9 through 12, the second question set forth above, we revise your opinion. Although there is no statute which addresses whether truancy may be the basis for suspension or expulsion,^{1/} substantive and

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1. A.R.S. § 15-802 addresses school attendance requirements; it does not consider whether a school district may with-hold educational services.

Mr. John Patrick Lyons
December 22, 1982
Page 2

procedural due process guarantees limit the manner in which such a policy may be administered. See Goss v. Lopez, 419 U.S. 565 (1975); Knight v. Board of Education, 38 Ill. App.3d 603, 348 N.E.2d 299 (1976); Hamer v. Board of Education, 66 Ill. App.3d 7, 383 N.E.2d 231 (1978).

A school district governing board must first adopt policies that are reasonable and bear a rational relationship to the school's role in providing a public education. When suspension or expulsion is imposed under those policies, the district must weigh the severity of the punishment against the severity of the conduct. See Rose v. Nashua Board of Education, 506 F.Supp. 1366 (N.H. 1981). If the expulsion or suspension is so grossly disproportionate to the offense as to be arbitrary, it may be a violation of equal protection or substantive due process. Petrey v. Flaughner, 505 F.Supp. 1087 (E.D. Ken. 1981); see Donaldson v. Board of Education, 98 Ill. App.3d 438, 424 N.E.2d 737 (1981); Cook v. Edwards, 341 F.Supp. 307 (N.H. 1972); Mitchell v. Board of Trustees, 625 F.2d 660 (5th Cir. 1980). As for procedural due process, the district must comply with A.R.S. § 15-843 and the standards set forth in Goss, supra.

Therefore, while truancy may be a sufficient cause in some cases to suspend or expel a student in grades 9 through 12, the circumstances of each case must be considered before a decision can be made as to whether suspension or expulsion would violate constitutional guarantees.

In response to the third question set forth above, we agree that there is no prohibition placed upon a school district for making attendance a requirement for obtaining class credit. However, any such attendance requirement must be applied equally to all affected.

Sincerely,



BOB CORBIN
Attorney General

BC:VBW:lm

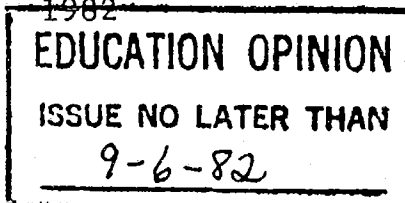
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July 8, 1982



7-13-82 pc
LASSEN
R82-106

Mr. Robert K. Corbin
Attorney General
State of Arizona
State Capitol
Phoenix, Arizona 85007

Dear Mr. Corbin:

I have enclosed a copy of my letter of opinion dated July 8, 1982, to Mr. Fred Bull, Superintendent, Sunnyside Unified School District No. 12, Pima County, Tucson, Arizona. This opinion deals with the suspension and/or expulsion of students due to truancy.

The enclosed opinion is forwarded to you under the provisions of A.R.S. §15-436(b) for your concurrence or revision.

Very truly yours,

John Patrick Lyons
John Patrick Lyons

JPL:de
Enclosure

JOHN G. STOMPOLY
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JOHN PATRICK LYONS
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EDUCATION OPINION

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PERSONAL AND CONFIDENTIAL

Mr. Fred T. Bull, Superintendent
Sunnyside Unified School District No. 12
Post Office Box 11280
Tucson, Arizona 85734

Dear Mr. Bull:

In response to your letter of July 1, 1982
(received by this office on July 6, 1982), I have reviewed
the following questions for the District:

1. Is truancy in and of itself a sufficient cause
to suspend or expel a student in grades 1 through 8?
2. Is truancy a sufficient cause to suspend or
expel a student in grades 9 through 12?
3. May the District deny academic credit for any
course in which the student has been truant or absent for
more than 10% of the actual class days?

The answer to Question No. 1 is no; and the answer
to Questions Nos. 2 and 3 is yes. These answers are based
upon the reasoning set forth below.

In response to Question No. 1, pursuant to numerous
opinions of the Attorney General, to-wit: Attorney General
Opinions Nos. I79-179, I79-23, I78-242, and I78-111, the
Attorney General has interpreted the provisions of A.R.S.
§15-802 (a copy of which is attached) to bar the use of
truancy as a justification for suspension or expelling of a
student.

In response to Question No. 2, may a student be
suspended or expelled from high school (grades 9 through
12), we believe the answer is yes. The provisions of A.R.S.
§15-802 are specifically limited to children involved in

Mr. Fred T. Bull, Superintendent
Page Two
July 8, 1982

"common school courses" (see A.R.S. §15-802(B)(4)). The common schools are those grades constituting 1 through 8 (cf. A.R.S. §15-328, §15-444(C), and §15-448(A)). Given that A.R.S. §15-802 is thus not a bar to the employment of truancy as a good and sufficient reason for either suspension or the expelling of students, it is our opinion that the provisions of A.R.S. §15-342 and A.R.S. §15-841 constitute a legally sufficient legislative grant of authority to the school districts to suspend high school students for truancy. Naturally, this presupposes a system of adjudging truancy which is in conformance with the due process provisions of the United States Constitution. In our opinion, the Sunnyside School District's policy of permitting each student a hearing, plus an appeal procedure, more than fulfills the requirements of constitutional due process. Based upon the above, therefore, we are of the opinion that students may be suspended for truancy in grades 9 through 12. We note that the Opinion of the Attorney General bearing Opinion No. I79-136 appears to agree with this conclusion, but that Opinion is in conflict with the Attorney General Opinion No. I79-222.

In reference to your third question, each school district is charged with maintaining a course of studies consistent with the rules of the State Board of Education. See, A.R.S. §15-341, et seq. As I understand the position of the School District, any student who has failed to attend at least 90% of the official teaching days available in any given course in the high school, that student will be denied credit in that course for that semester. I believe this is an educational decision of the Board. As long as this policy is uniformly applied and a sufficient hearing process is available for appeal (such as the one outlined in the School Policy Manual), then the Board may establish such a policy and enforce same.

This opinion is being forwarded to the office of the Attorney General for concurrence or review pursuant to A.R.S. §15-436(B). Unless circumstances require immediate action upon this opinion, you should await my forwarding to you of the response of the Attorney General before acting on the opinions set forth above.

Sincerely yours,

John Patrick Lyons

JPL:de